

**HUD Amendment to AIA  
Document B108**

**U.S. Department of Housing  
and Urban Development**  
Office of Healthcare Programs

OMB Approval No. 9999-9999  
(exp. mm/dd/yyyy)

Public reporting burden for this collection of information is estimated to average 0.25 hours. This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number. No confidentiality is assured.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

**HUD AMENDMENT TO  
AIA DOCUMENT ~~B181~~B108 STANDARD FORM OF AGREEMENT  
— BETWEEN OWNER AND ARCHITECT FOR ~~HOUSING SERVICES~~  
FEDERALLY FUNDED OR FEDERALLY INSURED PROJECT  
~~Lean Section 232 New Construction, Substantial Rehabilitation and Section 241(a)~~**

~~The provisions of this Amendment supersede and void all inconsistent provisions between the Amendment and the Agreement.~~

for HUD PROJECT NO. \_\_\_\_\_

1. Definition of terms used in this Amendment.

~~—a. If not defined in this Amendment, capitalized terms shall have the meaning given them in the Agreement, the Regulatory Agreement— between Borrower and the U.S. Department of Housing and Urban Development (HUD), the Note, and/or the Security Instrument.~~

a. “Agreement” means the AIA Document ~~B181~~B108, Standard Form of Agreement Between Owner and Architect for ~~Housing Services~~a Federally Funded or Federally Insured Project, to which this Amendment is attached.

b. “Owner” means Borrower, as defined in the HUD Regulatory Agreement applicable to this transaction.

c. “Subcontractor” means any material supplier, equipment lessor, industrialized housing (or housing component) manufacturer/supplier, or any

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person or entity providing services that has either a direct or indirect (in the case of sub-subcontractors) contractual relationship with the Contractor responsible for construction of the Project.

2. The U. S. Department of Housingprovisions of this Amendment supersede any provisions inconsistent between this Amendment and Urban Development.the Agreement.

~~—c. Owner. The Mortgagor/~~

3. Owner-

~~—d. Subcontractor. Any Project subcontractor, materials supplier, equipment lessor or industrialized housing manufacturer/supplier.~~

~~2. The Owner and the Architect represent that they are familiar with HUD requirementsHUD's architectural requirements as set forth in Program Obligations and will comply with these instructions in accordance with said Program Obligations, including the, but not limited to, review for compliance with HUD Minimum Property Standards, Fair Housing Accessibility Guidelines,; the accessible design, construction and alteration requirements of Section 504 of the Rehabilitation Act of 1973 (see 24 C.F.R. Part 8); the Uniform Federal Accessibility Standards, and Handbook 4460.1 Rev 1, Architectural Analysis and Inspections For Project Mortgage Insurance, as set forth in publications given to them by HUD for this Project and will perform all services in accordance with the applicable requirements of HUD.; the accessible design and construction requirements of the Fair Housing Act (see 24 C.F.R. § 100.205); and the Americans with Disabilities Act Guidelines, 37 C.F.R. Part 1191.~~

~~3. No portion of the Architect's services and responsibilities or the Owner's responsibilities shall be assigned, transferred or delegated to anyone not acceptable to HUD.~~

~~4. The Architect shall advise HUD as well as the Owner of any omissions, substitutions, defects and deficiencies observed in the work of the Contractor.~~

~~5. The Architect shall issue Certificates of Payment and Certificates~~

4. This Agreement shall not be assigned in whole or in part to anyone, without the written consent of HUD. Neither Owner nor Architect shall contract with anyone currently listed by the General Services Administration as a firm that is debarred, suspended, proposed for debarment, or declared ineligible by federal agencies or by the General Accounting Office. Owner and Architect shall each require from their contractors, consultants and agents similar agreements prohibiting contracts with such persons or entities.

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5. In the event the Owner, Lender, the surety under the performance bond, or HUD takes control of the Project or takes responsibility for completion of the Project construction pursuant to said parties' legal rights under the agreements concerning the Project, and notwithstanding the provisions of Article 7 of this Agreement, the party taking control or taking responsibility for completion of construction, and any substitute contractor hired by said party, shall have the right to use the Drawings and Specifications, and other documents, including those in electronic form, prepared by Architect and Architect's consultants. Such use shall be to the same extent and with the same limitations as Owner under this Agreement or as Contractor under the AIA Document A201, General Conditions of the Contract for Construction, provided Owner has paid Architect in accordance with this Agreement and is not in breach or default thereunder. Architect's execution of this Amendment shall represent consent by Architect and Architect's consultants to such use.

6. Owner shall provide information to or obtain approval from Lender and HUD regarding any action or observation by either Owner or Architect that significantly increases the Project's cost or time of construction or decreases the quality of construction.

7. The certificates for payment and the Certificate of Substantial Completion shall be in the formforms as prescribed by HUD.

~~6. The Architect shall furnish copies of all Architect's Supplemental Instructions to the Owner, Mortgagee and HUD,~~

~~7. If the project for which the drawings and specifications prepared by the Architect has not been completed and there is a default or foreclosure, the Mortgagee or HUD may use the drawings and specifications to complete construction of the project without additional cost.~~

8. ~~The~~This Agreement shall not be terminated without ~~5~~seven days prior written noticeNotice to ~~the Mortgagee~~Lender and HUD.

9. ~~The~~Owner and ~~the~~Architect recognize the interest of ~~the Mortgagee~~Lender and HUD and that any action or determination by either ~~the~~Owner or ~~the~~Architect is subject to acceptance or rejection by ~~the Mortgagee~~Lender and ~~by~~HUD.

10. ~~The~~ In addition to any other rights or remedies Owner and ~~the~~may have under this Agreement, if a duly authorized representative of HUD requests that Architect shall

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~~recognize as a valid reason for termination, any request by HUD for termination because of be replaced due to Architect's inadequate performance, undue/unjustified delay or misrepresentation which may make the further services of thematerial facts. Owner may terminate this Agreement after giving Architect unacceptable to HUD at least seven days' written notice and having given an opportunity to correct the performance or other issues to HUD's satisfaction.~~

~~11. The~~

~~11. The Architect designing the Project may have an identity of interest with Owner, Contractor, and/or any Project subcontractor, except however, any Architect administering the Construction Contract mayshall not have anany identity of interest with the Owner, Contractor, and/or any Project-subcontractor. An identity of interest is construed to exist where:~~

- ~~—a. The\_\_ Architect has any financial interest in the Project other than the fee for professional service stipulated compensation set forth in Article 11 and any compensation that may arise pursuant to Article 9 of the Agreement.~~
- ~~—b. The\_\_ Architect advances any funds to the Owner, Contractor and/or any subcontractor; and/or the Contractor and/or any subcontractor advancesadvance any funds to the Architect.~~
- ~~—c. The\_\_ Architect has any financial interest in the Owner, Contractor and/or any subcontractor; or the Owner, Contractor and/or any subcontractor has any financial —interest in the Architect.~~
- ~~d. \_ Any officer, director, stockholder or, partner, manager or member of the Architect has any financial interest in the Owner, Contractor and/or any subcontractor; or any officer, director, stockholder or, partner, manager or member of the Owner, Contractor and/or any subcontractor has any financial interest in the Architect.~~
- ~~—e. \_ Any officer, director, stockholder or, partner, manager or member of the Architect is also an officer, director, stockholder or, partner, manager or member of the Owner, Contractor, and/or any subcontractor;.~~
- ~~f. \_ Owner, Contractor and/or any subcontractor, or any officer, director, stockholder or, partner of the Owner, Contractor and/or subcontractor is also an officer, director, stockholder or partner of the Architect.~~

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~~—f. The Owner, Contractor and/or any subcontractor, or any officer, director, stockholder or partner of such, manager or member of~~ Owner, Contractor and/or subcontractor provides any of the ~~——~~required architectural services; or ~~where the Owner, Contractor and/or any subcontractor, or any officer, director, stockholder or partner of such Owner, Contractor and/or subcontractor,~~ while not directly providing an architectural service, acts as a consultant to ~~the~~ Architect.

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\_\_\_\_ 13. The funds for this Project, including ~~the~~ Architect's compensation funds under ~~the~~ this Agreement, will be provided ~~in, as~~ the case may be, from the proceeds of ~~an insured mortgage project by a mortgage~~ Loan from a Mortgagee Lender who in turn obtained a commitment for mortgage insurance from HUD. ~~The Mortgagee, in accordance with the National Housing Act, as amended, or from a capital advance from the US Treasury pursuant to Section 202 of the Housing Act of 1959 or Section 811 of the Cranston-Gonzalez National Affordable Housing Act. Said Lender, pursuant to the terms of a Building Loan Agreement, or said US Treasury, pursuant to a Capital Advance Agreement, in accordance with HUD's rules and regulations and terms of a Building Loan Agreement, will agree to advance the proceeds of the mortgage Loan or capital advance to the Owner for completion of the work, but only to the extent that charges accrued and only to the extent and for the purposes specified in the Building Loan Agreement. The Building Loan or Capital Advance Agreement, when executed, shall specify the mortgage available for the Design Phase and for administration of the Construction Contract during the Construction Phase. However, neither the mortgage Security Instrument or capital advance, nor the Building Loan Agreement or Capital Advance Agreement, provide funds for Reimbursable Expenses pursuant to paragraph 10 Section 11.5 of the Agreement, Termination Expenses pursuant to paragraph 8 Section 9.7 of the Agreement nor, or Additional Service Compensation pursuant to paragraph Section 11.2 of the Agreement. Although the Architect may agree to provide a greater degree of services for additional compensation, require compensation for reimbursable expenses or termination expenses, or require basic compensation in excess of that provided by the Building Loan Agreement or Capital Advance Agreement for such services, the obligation to compensate the Architect for the greater degree of services or the aforesaid expenses shall not be enforceable against the Owner, the Mortgagee Lender, US Treasury, HUD or the Project; provided, however, that any entity, or individual other than Owner may agree to be responsible to the Architect. for payment thereof and, in such case, shall be identified below.~~

OWNER \_\_\_\_\_ ARCHITECT \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

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DATE \_\_\_\_\_ DATE \_\_\_\_\_

Provider of additional payment pursuant to paragraph 13 of this Amendment, if any.

\_\_\_\_\_  
\_\_\_\_\_

DATE \_\_\_\_\_

14. In the event of any dispute that is not resolved through mediation in accordance with section 8.2 of the Agreement, the Owner and Architect (and any successors of either) each agree that the method of binding dispute resolution shall be litigation in a court of competent jurisdiction. The checkboxes under Section 8.2.4, reading "Arbitration pursuant to Section 8.3 of this Agreement" and "Other: (Specify)" are hereby deleted in their entirety; Section 8.3 is also deleted in its entirety. [THE "ARBITRATION" AND "OTHER" CHECKBOXES, IN ADDITION TO SECTION 8.3, MUST BE PHYSICALLY STRICKEN FROM THE AGREEMENT].

15. The Owner and Architect (and any successors of either) further agree that if for any reason HUD becomes a party to a dispute arising from this Agreement, HUD shall not be bound in any manner to binding arbitration; nor shall HUD be bound by any other means of binding dispute resolution, other than litigation in a court of competent jurisdiction.

Executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

OWNER: \_\_\_\_\_ ARCHITECT: \_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_ By \_\_\_\_\_

\_\_\_\_\_  
Name and Title \_\_\_\_\_ Name and Title \_\_\_\_\_

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*[Remainder of this page intentionally left blank.]*

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## CERTIFICATION

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.

Name of Entity: \_\_\_\_\_

By: \_\_\_\_\_ /s/ \_\_\_\_\_

Printed Name, Title: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_ /s/ \_\_\_\_\_

Printed Name, Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**[ADD ADDITIONAL LINES IF MORE THAN TWO SIGNATORIES]**

### **Warning**

**Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.**

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